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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT M. ZEIDMAN

Appeal 2010-003564
Application 09/767,819
Technology Center 2400

Before JOSEPH F. RUGGIERO, JEFFREY S. SMITH, and
ANDREW CALDWELL, *Administrative Patent Judges*.

CALDWELL, *Administrative Patent Judge*.

DECISION ON APPEAL

SUMMARY

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-10. We have jurisdiction under 35 U.S.C. § 6(b).

Claims 1-10 stand rejected under 35 U.S.C. § 103(a) as obvious over the 1997 Broadcast of "Schindler's List" on NBC¹ in view of Matheny (US 6,766,524 B1; July 20, 2004; filed May 8, 2000) and Blackketter (US 7,103,904 B1; Sep. 5, 2006; filed June 30, 1999) and Williams (US 6,075,971; June 13, 2000).

We reverse.

STATEMENT OF THE CASE

Appellant describes the present invention as a system and method that allows content to be broadcast without commercial interruption, yet lets the company or companies that sponsor the broadcast to offer advertisements and discounts and various special offers to the viewers at a later time. The amount of time a viewer spends watching a particular broadcast is recorded along with information about the sponsoring companies or organizations for the broadcast. The viewer later accesses a central database, which sends back to the viewer advertisements, coupons, discounts, contests, and other enticements to purchase products, based on the amount of time the viewer spent watching broadcasts or segments of broadcasts that were sponsored by the advertiser. Abstract.

¹ Berney, Kerri, *You Should Know Better, Mr. Spielberg* (February 25, 1997), <http://members.aol.com/harx1/schlind.html>.

Independent claim 1 is representative:²

1. A method for allowing content to be broadcast without commercial interruption, yet letting a sponsor of the broadcast offer incentives to viewers to watch the broadcast, the method comprising:

receiving a broadcast with embedded information about the broadcast, said embedded information being provided to allow construction of a viewing record of the broadcast, the embedded information including information indicative of one or more sponsors of the broadcast;

extracting and displaying content from said broadcast without commercial interruption to a viewer;

extracting said embedded information from said broadcast;

storing said embedded information;

collecting viewer information including a user identifier and information indicative of an amount of the broadcast viewed by the viewer, specific incentives and links to the specific incentives being associated with the amount of the broadcast viewed by the viewer, wherein the collected viewer information is not collected in response to prompted viewer feedback provided by the viewer as part of viewer participation in an interactive reward program;

sending said stored embedded information and viewer information to a remote computer to allow said remote computer to construct said viewing record; and

providing the specific incentives to the viewer based on said viewing record, the viewing record including viewer information obtained without prompted viewer feedback provided by the viewer as part of

² Appellant argues claims 1-10 together as a group. *See* App. Br. 14-22. Reply Br. 4-7. Accordingly, we select independent claim 1 as representative.

viewer participation in an interactive reward program, the specific incentives including information indicative of one or more sponsors of the broadcast.
(Emphasis added.).

ARGUMENTS³

The Examiner finds that the combination of Schindler's List, Matheny, Blackketter, and Williams teaches the method of claim 1. (Ans. 3-4). The Examiner relies upon Matheny, in particular, to teach the collection of viewer information including information indicative of an amount of the broadcast viewed by the viewer. *Id.* The Examiner recognizes that Matheny does not teach a system in which the viewer information is collected without prompting for user feedback. *Id.* at 4. The Examiner finds that Williams teaches two methods for obtaining viewing information and providing rewards based on the viewing information, the first being a survey in which users are prompted for feedback, and the second being a passive monitoring system in which the user is not prompted for feedback. *Id.* at 8. The Examiner finds these two methods for obtaining viewer information to be interchangeable. *Id.* The Examiner relies upon this determination that the two methods are interchangeable to replace the “prompting” information collection method of Matheny with the passive information collection system of Williams. *Id.*

³ Rather than repeat the Examiner’s positions and Appellant’s arguments in their entirety, we refer to the following documents for their respective details: the Appeal Brief (App. Br.) filed June 15, 2009; the Examiner’s Answer (Ans.) mailed September 10, 2009; and the Reply Brief (Reply Br.) filed January 27, 2010. The Appeal Brief filed on August 23, 2006 has not been considered because it is not addressed to either the version of the claims or the grounds of rejection that are the subject of this appeal.

Appellant argues, among other things, that the combination does not teach collecting viewer information including information indicative of an amount of the broadcast viewed by the viewer, wherein the collected viewer information is not collected in response to prompted viewer feedback provided by the viewer as part of viewer participation in an interactive reward program (App. Br. 17-20).

ISSUE

Does the combination of Schindler's List, Matheny, Blackketter, and Williams teach collecting viewer information including information indicative of an amount of the broadcast viewed by the viewer, wherein the collected viewer information is not collected in response to prompted viewer feedback provided by the viewer as part of viewer participation in an interactive reward program?

ANALYSIS

Matheny describes a system where a broadcaster notifies viewers of a television program that they may be rewarded for paying attention to a current or upcoming program. Col. 2, ll. 56-59. In order to verify that the viewer watched the program, the system presents the user with a test question based upon the content of the program at or near the program's end. *See*, Col. 3, ll. 13-29. Viewers who answer the question correctly are offered a reward. *Id.* Matheny explains that some viewers may be rewarded for merely participating in an interactive program. Col. 3, ll. 34-37. Matheny's examples of mere participation require activity on the part of the viewer during the program. The viewer either selects an icon with a

pointing device or presses one or more buttons on a remote control in order to participate in the program. Col. 3, ll. 37-40. Matheny therefore suggests that mere participation requires some activity by the viewer *during* the interactive program other than passively watching the program.

Williams describes a system for targeting specific audiences for coupon distribution based on preferences stored in a user's profile. Col. 2, ll. 3-9. The preferences (i.e., interests) of a user may be determined by monitoring a user to determine the user's preferences or by surveying the user. *Id.* Williams explains that monitoring a user may involve observing or otherwise determining the type of television or other entertainment a particular user selects. Col. 6, ll. 2-5. The Examiner characterizes this observation of the type of television a user selects as "passive monitoring." Williams also explains that a user may disclose preferences as part of *registering* with an entertainment network or as part of some other promotion. Col. 6, ll. 5-7. Although Williams at column 2 may describe surveys in general, when the sections of Williams relied upon by the Examiner are read together, Williams teaches a survey that is delivered as part of a registration process in order to determine a user's preferences, or interests. There is no evidence in the portions of Williams relied upon by the Examiner that user registration occurs while the user is watching a program.

The Examiner's rejection relies upon Williams for evidence that, for purposes of gathering viewing information, a passive monitoring system is interchangeable with a system that surveys, or questions, viewers. The Examiner's finding appears to be based on generalizing from the teaching of Williams. Although not explicitly stated, the Examiner appears to conclude

that Williams' specific teaching regarding the interchangeability of passive monitoring and registration surveys for determining a user's preferences, or interests, suggests that passive monitoring and surveys are interchangeable for the purpose of determining user participation in an interactive program. Given the difference in the nature and timing of the questions, or survey of Williams versus the user interaction in Matheny to determine participation in the interactive program, we do not see how the evidence is sufficient to support the Examiner's conclusion that passive monitoring and surveys are interchangeable for the purpose of determining a user's participation in an interactive program. Accordingly, we do not sustain the rejection of representative claim 1.

CONCLUSION

Appellant has shown that the Examiner erred in rejecting claims 1-10 under 35 U.S.C. § 103.

DECISION

The Examiner's decision rejecting claims 1-10 is reversed.

REVERSED

gvw